

Introduced by Senator Pan

February 19, 2016

An act to add Article 5 (commencing with Section 7523) to Chapter 21 of Division 7 of Title 1 of the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 1297, as introduced, Pan. Public employee retirement plans: automatic enrollment and escalation.

The California Constitution grants the retirement board of a public pension or retirement system plenary authority and fiduciary responsibility for investment of moneys and administration of the system, as specified.

Under existing law, public employees may participate in prescribed supplemental defined benefit plans and deferred compensation plans established or maintained by employers.

This bill, notwithstanding any other law, would authorize a state or local public employer participating in an employee retirement plan, defined to include certain defined benefit plans, deferred compensation plans, or payroll deduction individual retirement account plans, to make a deduction from the wages or compensation of an employee for contributions attributable to automatic enrollment and automatic escalation in the employee retirement plan. The bill would provide that an employer that provides automatic enrollment or automatic escalation in an employee retirement plan is not liable for the investment decisions made by the employer on behalf of any participating employee with respect to the default investment of contributions made for that employee to the plan, if specified requirements are met.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Article 5 (commencing with Section 7523) is added to Chapter 21 of Division 7 of Title 1 of the Government Code, to read:

Article 5. Public Employee Retirement Plans: Automatic Enrollment and Escalation

7523. As used in this article:

(a) “Automatic enrollment” means an employee retirement plan provision under which an employee will have a specified contribution made to the plan, equal to a compensation reduction, that will be made for the employee unless the employee affirmatively elects not to have any compensation reduction contributions or elects a compensation reduction contribution in an alternative amount, in accordance with the federal Pension Protection Act of 2006 (Public Law 109-280). An employee retirement plan may provide for automatic enrollment whether or not the employee retirement plan elects to provide for automatic escalation.

(b) “Automatic escalation” means an employee retirement plan provision under which an employee’s salary reduction contribution to the plan is increased by a specified amount annually up to the limits imposed by the Internal Revenue Code of 1986, as amended, unless the employee affirmatively elects not to have the automatic escalation amount deducted from compensation or elects an alternative contribution reduction amount.

(c) “Employee retirement plan” means a plan described in Sections 401(k) or 403(b), or a governmental deferred compensation plan described in Section 457, or a payroll deduction individual retirement account plan described in Sections 408 or 408A, of the Internal Revenue Code of 1986, as amended.

7523.1. (a) This article shall apply to all state and local public employee retirement plans and to their participating employers.

1 (b) The administration of this article shall comply with
2 applicable provisions of the Internal Revenue Code and the
3 Revenue and Taxation Code.

4 7523.2. (a) Notwithstanding any other law, a state or local
5 public employer participating in an employee retirement plan may
6 make a deduction from the wages or compensation of an employee
7 for contributions attributable to automatic enrollment and automatic
8 escalation in the employee retirement plan, regardless of whether
9 the plan is subject to the federal Employee Retirement Income
10 Security Act of 1974, as amended (29 U.S.C. Sec. 1001 et seq.).

11 (b) (1) An employer that provides automatic enrollment or
12 automatic escalation in an employee retirement plan is not liable
13 for the investment decisions made by the employer on behalf of
14 any participating employee with respect to the default investment
15 of contributions made for that employee to the plan, if all of the
16 following requirements are met:

17 (A) The plan provides the participating employee at least
18 quarterly opportunities to select investments for the employee's
19 contributions among investment alternatives available under the
20 plan.

21 (B) The participating employee is given notice of the investment
22 decisions that will be made in the absence of direction from the
23 employee, a description of all the investment alternatives available
24 for employee investment direction under the plan, and a brief
25 description of procedures available for the employee to change
26 investments.

27 (C) The employee is given at least annual notice of the actual
28 default investments made of contributions attributable to the
29 employee.

30 (2) The relief from liability of the employer under this section
31 extends to any employee retirement plan official who makes the
32 actual default investment decisions on behalf of participating
33 employees.

34 (c) Nothing in this section modifies any existing responsibility
35 of employers or other plan officials for the selection of investment
36 funds for participating employees.

37 (d) Nothing in this section or any other law shall be construed
38 as authorizing an employer to withhold or divert any portion of an
39 employee's wages to pay any tax, fee, or charge prohibited by

- 1 Section 50026, whether or not the employee authorizes that
- 2 withholding or diversion.

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